Office-Supreme Court, U.S.
FILED
JUN 29 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2205

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois,

Petitioner,

vs.

TONI MURRAY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Whether judicial immunity cloaks the Clerk of the Circuit Court of Cook County from liability for damages in a Sec. 1983 Civil Rights suit for acts taken by the Clerk in the discharge of his official duties.

LIST OF PARTIES BELOW

The parties in the Court below not named in the caption on this petition are defendants City of Chicago, John Ziemke, Theodore Pappas, James Rochford and James O'Grady.

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Petitioner, MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in the proceedings on November 25, 1980, as amended on March 11, 1981.

OPINION BELOW

The opinion of the Court of Appeals is reported at 634 F.2d 365 (7th Cir. 1980) and appears herein as Appendix A. The ruling of the District Court is not reported, and appears herein as Appendix B.

JURISDICTION

The judgment of the Court of Appeals was entered on November 25, 1980. A timely petition for rehearing *en banc* was denied as modified on March 31, 1981. That order appears herein as Appendix C. This petition was filed within 90 days from that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 42 U.S.C.

§ 1983. Civil action for deprivation of rights:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

The case presents the question whether the Clerk of the Court is entitled to judicial immunity from damage liability pursuant to 42 U.S.C. § 1983, for his official actions in implementing procedures for recalling arrest warrants such as the one issued by the Circuit Court for

the respondent. The petitioner contends that as the Clerk of the Court he is entitled to judicial immunity. The respondent contended below that the Clerk is not immune and maintained that the Clerk is liable because he did not take more care in implementing the pre-existing notification phase of the explicit procedures for recalling the arrest warrant naming the respondent. The Seventh Circuit Court of Appeals agreed with the respondent that she was entitled to further discovery to identify who was at fault for the wrong done her and reversed the District Court's summary judgment order which was in favor of the Clerk of the Court.

The respondent alleged that she was arrested on an arrest warrant which was void, having been recalled by judicial order prior to her arrest. She claimed that she was injured during the arrest and subsequent six to seven hour detention, and that the Clerk of the Court, among others, was liable for these injuries because he

> ". . . and those other of his fellow servants and employees also responsible on 13 January 1975 and on 25 March, 1975 for authorizing, approving and implementing their duty to expeditiously communicate judicial orders concerning arrest warrants, did not, prior to 25 March 1975, fulfill their constitutional duty to communicate in a reasonable manner to these law enforcement defendants the fact that a judicial order of two and one-half months earlier had made illegal and unconstitutional the conduct then occurring upon and toward plaintiff on or about 25 March 1975."

Clerk Finley moved for summary judgment on the grounds that the Clerk's office has detailed procedures for handling and communicating judicial orders concerning arrest warrants, and that the procedures were followed as to the warrant on which the respondent was arrested.

It is undisputed that the Clerk's procedures regarding warrant recall orders were formulated in 1974 by a joint committee of representatives from the Chicago Crime Commission, the state judiciary, the Chicago Police Department, the Cook County State's Attorney's Office and the Circuit Court Clerk's Office. Deputy clerks were first advised of the new procedures by office memorandum. The procedures are detailed in the Clerks' Operating Manual, copies of which are circulated among all deputy clerks.

It is undisputed that the deputy clerk responsible for the processing of the recall of respondent's arrest warrant properly followed the applicable procedures with regard to recalling the warrant for her arrest. However, the Police Department had no record of having received its copy of the recall form.

The respondent filed a single brief in opposition to all of the petitioner's pre-trial motions, but submitted no evidence to controvert any of Clerk Finley's affidavits and documents. In light of Morgan Finley's uncontradicted evidence the District Court concluded that the Clerk's warrant recall procedures are constitutional and that they were followed as to the respondent:

> "A careful examination of the procedures in effect at the time of the alleged occurrences, as shown by the documents and affidavits filed by the defendant Finley, shows that the warrant recall procedures of the Circuit Court of Cook County are more than adequate to satisfy constitutional requirements. Deputy Clerks are instructed to effectuate the notification of the Chicago Police Department of the recall of an arrest warrant on the same day that the judicial recall is entered. All personnel are aware of the serious consequences of a failure to so notify the Police Department in a timely manner. Several copies of the orders are filed with the Police

> Department and with the Clerk's office as well as being placed in the official court file. . . .
>
> "Furthermore, the affidavit of Maurice McNicholas and Exhibit B filed by the plaintiff show that the procedures outlined previously were followed as to the plaintiff's arrest warrant. At best, it can only be said that if the Police Department did not receive notice of the recall, the subsequent arrest of the plaintiff was the result of inadvertence or accident. Such circumstances cannot give rise to an action under 42 U.S.C., Section 1983, *Little v. Walker*, 552 F.2d 193, Seventh Circuit, 1977; *Bonner v. Coughlin*, 545 F.2d 565, Seventh Circuit 1976." (Appendix B)

In accordance with these conclusions and with his conclusion that there was no genuine issue of fact which could result in any judgment other than one for the Clerk, the District Judge granted petitioner Finley's motion for summary judgment.

The Seventh Circuit reversed and held that "someone is surely at fault for failing to establish or execute appropriate proceedings for presenting such serious malfunctionings in the administration of justice." *Murray v. City of Chicago*, 634 F.2d at 366. The Seventh Circuit concluded that deciding whether the Clerk of the Court was entitled to official immunity would be "premature." *Murray v. City of Chicago*, 634 F.2d at 367, n. 4.

On March 11, 1981, subsequent to the filing of the Clerk's Petition for Rehearing *En Banc* and prior to the March 31, 1981, denial of the petition, the Seventh Circuit amended its opinion and Circuit Judge Swygert filed a concurring opinion. The Seventh Circuit amended the opinion by adding to footnote 4 that "(m)ere negligence, of course, will not support a Sec. 1983 action

against Finley." See *Bonner v. Coughlin*, 545 F.2d 565, 568 (7th Cir. 1976). Judge Swygert agreed with the result but applied a discretionary/mandatory test to determine the Clerk's official immunity at trial by following *McCray v. Maryland*, 456 F.2d 1 (4th Cir. 1972).

Thus, although the Seventh Circuit panel split on the appropriate standards to determine the Clerk's entitlement to official immunity, the Seventh Circuit agreed that a factual record must be made before the Clerk's judicial immunity can even be decided.

REASONS FOR GRANTING THE WRIT

THE SEVENTH CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT DETERMINATION OF THE JUDICIAL IMMUNITY OF THE CLERK OF THE CIRCUIT COURT SHOULD BE MADE AFTER FURTHER DISCOVERY OR TRIAL WHERE IT IS UNDISPUTED THAT THE CLERK PERFORMED JUDICIAL OR QUASI-JUDICIAL FUNCTIONS WITHIN HIS AUTHORITY IN IMPLEMENTING THE WARRANT RECALL PROCEDURES; MOREOVER, THE HOLDING IS IN CONFLICT WITH OTHER CIRCUITS AS WELL AS THE SEVENTH CIRCUIT'S RECENT HOLDING IN *PANKO v. RODAK*[1] AND EFFECTIVELY NEGATES THE DOCTRINE OF QUASI-JUDICIAL IMMUNITY.

The Seventh Circuit erred in ignoring the Clerk of the Court's immunity from damage liability for his actions in a lawsuit brought pursuant to 42 U.S.C. § 1983. *Dieu v. Norton*, 411 F.2d 761 (7th Cir. 1969). The Court wrongfully remanded the case with instructions to the trial court to develop the record on the issue of the Clerk's immunity from damage liability either through discovery or trial. In fact the Seventh Circuit failed to follow the well-established rule in the Seventh Circuit, as well as other circuits, that the Clerk of the Court is cloaked with judicial immunity from damages for acts performed within the scope of his official duties. No dispute exists that the act of implementing reasonable warrant recall procedures is one taken in discharge of the Clerk's official duties. The Seventh Circuit remanded the case without expressing an opinion on this very important bar to the Clerk's liability, thus effectively negating the doctrine of immunity as applied to the Circuit Court Clerk.

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[1] 606 F.2d 168 (7th Cir. 1979).

In *Panko v. Rodak*, 606 F.2d 168, 171 (7th Cir. 1979) *cert. den.* 100 S.Ct. 1034 (1980) the Seventh Circuit recently held:

> The administration and control of the Court's docket are part of the Court's judicial function. And in enforcing the Court's rules, see S.Ct. Rules 39(4) and 53(5), and executing the Court's directives regarding the docketing of cases, . . . , the defendants were carrying out judicial or quasi-judicial functions within their authority. Therefore, the defendants are entitled to judicial immunity from damage liability for their actions. *Brown v. Dunne*, 409 F.2d 341, 343 (7th Cir. 1969).

Similarly, in the instant case, warrant recall orders are unquestionably part of the Court's judicial function. In enforcing and executing the Court orders, the Clerk of the Court clearly carried out judicial and quasi-judicial functions within his authority.

The respondent below merely alleged that the Clerk did not take more care in implementing the pre-existing notification phase of the explicit procedures for recalling the warrant against her. Without dispute, the Clerk instructed his employees about these procedures and specifically attempted to impress upon them the importance of their duties as to warrant recalls. At most, the inadvertent loss of a single warrant recall letter, manifestly does not strip the Clerk of his quasi-judicial immunity.

Recently this Court in *Dennis v. Sparks*, ... U.S. ....., 100 S.Ct. 183, 66 L.Ed.2d 185 (1980), held that while private parties who allegedly bribed a state judge are not protected by the judge's absolute immunity from liability under 42 U.S.C. Sec. 1983, the Court reaffirmed the doctrine of absolute judicial immunity under appropriate circumstances. In *Dennis* this Court cited its

earlier opinion in *Gravel v. United States*, 408 U.S. 606, 92 S.Ct. 2614, 33 L.Ed.2d 583 (1972), for the proposition that a Senator's aide as well as the Senator were immune under the speech or debate clause in those situations where the conduct of the aide would be a protected legislative act if performed by the Senator himself. In judicial immunity cases, this Court reasoned that if the petitioner "was actually performing a judicial act or was *in any sense an official aide of the judge . . . in order that judicial duties may be properly accomplished*" then the judge's absolute immunity would also cloak the petitioner. (Emphasis supplied), *Dennis v. Sparks*, ... U.S. ....., 101 S.Ct. 183, 66 L.Ed.2d 185 (1980).

As the Seventh Circuit recognized in *Panko v. Rodak*, 606 F.2d 168, 171 (7th Cir. 1979) *cert. den.* 100 S.Ct. 1034 (1980), the Clerk of the Court is an official aide of the judge when performing quasi-judicial functions.

Furthermore, the Third, Fourth, Seventh, Eighth and Ninth Circuits have all previously held that Clerks of the Court are protected by judicial immunity. *Lockhart v. Hoenstirne*, 411 F.2d 455 (3d Cir. 1969) *cert. den.* 396 U.S. 941 (1969); *Steinpreis v. Shook*, 377 F.2d 282 (4th Cir. 1967); *Brown v. Dunne*, 409 F.2d 341 (7th Cir. 1969); *Davis v. McAteer*, 431 F.2d 81 (8th Cir. 1970); *Stewart v. Winnick*, 409 F.2d 826 (9th Cir. 1969).

The respondent's contention that the Clerk of the Court is not cloaked with judicial immunity and the Seventh Circuit's view that further facts must be clarified before the Clerk of the Court can be dismissed flies in the face of the Seventh Circuit's own previous decisions that the Clerk of the Court is entitled to judicial immunity at the initial stage of the proceedings. Clearly, the Seventh Circuit erred in remanding the instant cause. The

determination of Clerk Finley's judicial immunity is not a function of "further clarification of the facts." Far from being "premature," immunity is a threshold issue. No more facts are necessary for the court to determine that the petitioner is cloaked with immunity.

CONCLUSION

For the foregoing reasons a writ of certiorari should issue to review the judgment and opinion of the Seventh Circuit.

Respectfully submitted,

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